



Federal Communications Commission
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April 17, 2020

Molly C. Dwyer, Clerk of the Court
United States Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *Children's Health Defense, et. al. v. FCC & USA*, No. 20-70297

Dear Ms. Dwyer:

On behalf of the Federal Communications Commission ("FCC"), I write to advise the Court of a recent development relevant to the FCC's pending motion to transfer this case to the United States Court of Appeals for the District of Columbia Circuit, where the first petition for review of the same FCC order was filed. *See Environmental Health Trust, et al. v. FCC*, D.C. Cir. No. 20-1025 (filed Jan. 31, 2020).

The D.C. Circuit recently set a briefing schedule that provides for the filing of petitioner's opening brief on May 18, 2020, and for the government's answering brief on June 17. Clerk's Order, *Environmental Health Trust*, D.C. Cir. No. 20-1025 (Apr. 6, 2020). If transferred, the above-referenced case would, in the usual course, be consolidated with any other petition challenging the same order. D.C. Cir. Handbook of Practice and Internal Procedures, Part V.A, p. 24 (court generally will consolidate "all petitions for review of agency orders entered in the same administrative proceeding."). Prompt action on the government's motion to transfer will thus allow a briefing schedule in the D.C. Circuit that would take account of all of the petitions that challenge the Commission order at issue here.

We note that on April 2, 2020, Petitioners filed a "Supplemental Petition for Review" in this case. For the reasons set forth in the FCC's reply in support of the agency's transfer motion (pgs. 4-5), it is for the D.C. Circuit to determine, after this case has been transferred to that court, any issues raised by Petitioners as to the validity of the petitions for review filed in this case and *Environmental Health Trust*.

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Sincerely,

/s/ William J. Scher

William J. Scher

Counsel for Respondent FCC

cc: Scott M. McCullough, *Counsel for Petitioners*

Jeffrey Beelaert, *Counsel for Respondent USA*

Edward B. Myers, *Counsel for Amici Environmental Health Trust, et al.*